D.P.U. 96-83-A

Petition of MCI Telecommunications Corporation, pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of an interconnection agreement between MCI and New England Telephone and Telegraph Company d/b/a NYNEX.

APPEARANCES: Hope Barbalescu, Esq.
One International Drive
Rye Brook, New York 10573

-and-

Robert Glass, Esq.
Glass Seigle & Liston
75 Federal Street
Boston, MA 02110
FOR: MCI TELECOMMUNICATIONS CORPORATION
Petitioner

Bruce P. Beausejour, Esq.
John Messenger, Esq.
185 Franklin Street, Room 1403
Boston, MA 02107
FOR: NEW ENGLAND TELEPHONE & TELEGRAPH COMPANY D/B/A NYNEX
Respondent

ORDER ON MOTION FOR RECONSIDERATION AND CLARIFICATION OF MCI TELECOMMUNICATIONS CORPORATION

I. INTRODUCTION

On December 26, 1996, the Department issued an order in this arbitration proceeding which set forth our rulings on a number of the operational and technical terms and conditions which will form the basis for an interconnection agreement between New England Telephone and Telegraph Company d/b/a NYNEX ("NYNEX") and MCI Telecommunications Corporation ("MCI") under the Telecommunications Act of 1996 ("the Act"). NYNEX/MCI Arbitration, D.P.U. 96-83 (1996) ("NYNEX/MCI Arbitration Order").

On January 16, 1997, MCI filed with the Department a Motion for Clarification and Reconsideration ("Motion") of the Department's Order. MCI seeks clarification and/or reconsideration of the Department's findings concerning: (1) MCI's access to NYNEX's directory assistance ("DA") database (Motion at 2); (2) MCI's access to directory listings (id. at 5); and (3) NYNEX's service standards and damages for its failure to provide service to MCI at parity (id. at 6). NYNEX filed a response in opposition to the Motion ("Response") on February 7, 1997.

II. STANDARD OF REVIEW

A. Reconsideration

The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we

take a fresh look at the record for the express purpose of substantially modifying a decision reached after review and deliberation. Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Essex County Gas Company, D.P.U. 87-59-A at 2 (1988); Western Massachusetts Electric Company, D.P.U. 85-270-C at 12-13 (1987); Hutchinson Water Company, D.P.U. 85-194-B at 1 (1986).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Western Massachusetts Electric Company, D.P.U. 84-25-A at 6-7 (1984); Boston Edison Company, D.P.U. 1720-B at 12 (1984); Hingham Water Company, D.P.U. 1590-A at 5-6 (1984); Boston Edison Company, D.P.U. 1350-A at 4 (1983); Trailways of New England, Inc., D.P.U. 20017, at 2 (1979); Cape Cod Gas Company, D.P.U. 19665-A at 3 (1979).[1] Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989), citing Western Union Telegraph Company, D.P.U. 84-119-B (1985).

B. Clarification

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[1] The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. See generally Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987).

Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is so ambiguous as to leave doubt as to its meaning. Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 19296/19297, at 2 (1976).

III. ISSUES

A. Access to DA Database

1. Positions of the Parties

MCI appears to argue that the Department made a mistake, and the Department should reconsider its decision not to require NYNEX to provide its DA database to MCI (Motion at 2). MCI states that the Department's decision, that NYNEX need only provide "read-only" access to its DA database, is contrary to the Act and the Federal Communications Commission's ("FCC") recognition that NYNEX's DA database is an unbundled element, meaning it is available for purchase by competitors (id. at 2-3).

NYNEX states that the manner in which it is providing access to its DA database fulfills its obligations under the Act and the FCC rules (Response at 3, citing First Report and Order, CC Docket 96-98, FCC 96-325, adopted August 1, 1996 (released August 8, 1996); 47 U.S.C. § 251). Further, NYNEX argues that MCI has failed to satisfy the standard for reconsideration because MCI has not brought to light any previously unknown or undisclosed

facts that would have a significant impact upon the decision already rendered (id. at 3-4).

2. Analysis and Findings

In reaching our findings in the NYNEX/MCI Arbitration Order, the Department considered the same arguments made by MCI in its Motion, and specifically addressed the DA requirements under the Act and the FCC rules. NYNEX/MCI Arbitration Order, App. A at 9-11. MCI's motion has not brought to light previously unknown or undisclosed facts or shown that the decision was the result of mistake or inadvertence. Rather, it is an attempt to reargue issues considered and decided in the main case. Id. Accordingly, MCI's motion for reconsideration on this issue is hereby denied.

B. Access to Directory Listings

1. Positions of the Parties

MCI seeks clarification on whether NYNEX must provide MCI with daily downloads, in a magnetic tape or electronic format, of NYNEX's directory listings in the same format that is provided to NYNEX's own operators (Motion at 5). MCI claims that such an obligation is supported by the FCC rules, and that while it was an issue in the arbitration, the NYNEX/MCI Arbitration Order failed to make clear NYNEX's obligation (id.).

NYNEX argues that the issue of daily downloads of directory listings was not addressed in the arbitration, and consequently, there was no inadvertence by either the arbitrator or the Department (Response at 4).

2. Analysis and Findings

The issue in this arbitration was whether NYNEX is required to provide its DA database to MCI, not whether NYNEX is required to provide access to directory listings. The decision in D.P.U. 96-83 was therefore not intended to address the issue of access to directory listings and no clarification is necessary. Also, prior to issuing a final decision, the arbitrator provided both parties with complete drafts of his decision on each issue so that the parties could review whether the issues were fully and fairly stated. At no point did MCI suggest that an issue it wanted adjudicated had been omitted from consideration by the arbitrator. Accordingly, MCI's motion for clarification on this issue is hereby denied.

C. Service Standards and Damages

1. Positions of the Parties

MCI appears to argue that the Department made a mistake, and that the Department should reconsider the portion of the NYNEX/MCI Arbitration Order addressing NYNEX's service standards and damages for its failure to provide service to MCI at parity (Motion at 6). MCI argues that the Act imposes an obligation on the Department to decide all issues raised in the arbitrations, and that the Department's decision is therefore contrary to the Act in that it defers to an unspecified later date the issue of what are the appropriate standards for service at parity, and what penalties apply for breach of parity (id. at 6-7).

NYNEX states that the Department's decisions in D.P.U. 96-83 were the result of a joint arbitration for both Massachusetts and Rhode Island, with the particular decisions for MCI in Massachusetts limited to those issues that the Department had not previously addressed in Consolidated Arbitrations (Response at 6). See Consolidated Arbitrations, D.P.U. 96-

73/74, 96-75, 96-80/81, 96-83, 96-94 (Phase 3) (1996) ("Phase 3 Order"). Therefore, NYNEX argues, since service standards and damages were heard and determined in the Phase 3 Order, there is no basis for the Department to reconsider its ruling in the NYNEX/MCI Arbitration Order (id. at 7).

2. Analysis and Findings

Pursuant to Section 252(c) of the Act, the Department arbitrated particular issues in the Phase 3 Order which were common among parties (including MCI) negotiating an interconnection agreement with NYNEX. One of the issues heard and determined in the Phase 3 Order was service standards and damages. Phase 3 Order at 16-27. In that order the Department directed parties, including NYNEX and MCI, to negotiate performance standards and an appropriate level of liquidated damages.[2] Id. at 24, 26-27.

The issues heard and determined in D.P.U. 96-83 were those issues which were specific to MCI and NYNEX and not addressed in the Phase 3 Order. However, the Department's decisions in D.P.U. 96-83 were also the result of a joint arbitration for both Massachusetts and Rhode Island. Therefore, a potential existed for the NYNEX/MCI Arbitration Order to include overlapping issues — issues which needed to be determined for Rhode Island but which had already been determined for Massachusetts. The Department recognized that service standards and damages was one of these issues, and qualified its

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[2] The Phase 3 Order also stated that in the absence of negotiated service standards and damages the arbitrator would make a final determination. Phase 3 Order at 24. On February 25, 1997, the parties to the Phase 3 Order requested that the arbitrator make that final determination, and a procedural schedule has been set to resolve the issue.

determination on this issue in the NYNEX/MCI Arbitration Order by stating that "[t]o the extent that the Arbitrator's award that follows is not inconsistent with the Department's findings in the [Phase 3 Order], MCI and NYNEX may abide by the award. However, to the extent that this award conflicts with or is inconsistent with the Department's [Phase 3 Order], the [Phase 3 Order] will control." NYNEX/MCI Arbitration Order, App. A at 18.

Therefore, since the service standards and damages issues raised by MCI in its Motion were heard and determined in the Phase 3 Order, pursuant to the Department's obligations under the Act, there is no basis for the Department to reconsider its ruling on this issue in the instant Order. Accordingly, MCI's motion for reconsideration on this issue is hereby denied.

IV. ORDER

Accordingly, after due consideration, it is

ORDERED: That the Motion for Reconsideration and Clarification of MCI Telecommunications Corporation, filed with the Department on January 16, 1997, be and is hereby DENIED.

By Order of the Department,

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John B. Howe, Chairman

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Janet Gail Besser, Commissioner